

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1632 of 1997

in

SPECIAL CIVIL APPLICATION No 1227 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
3 to 5 : No
-

POPATLAL DEVIDAN GANDAVI

Versus

SATISHKUMAR RAMESHCHANDRA AAHIR

Appearance:

MR JAYANT PATEL for Appellant
NANAVATY ADVOCATES for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
MR RM CHHAYA for Respondent No. 3

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 13/01/98

ORAL JUDGEMENT (Per Balakrishnan,J.)

This is an appeal preferred by a third-party after having obtained leave of this Court. Respondent no.1 was the President of the Municipal Corporation. An order was passed against him under Sec.37(1)(b) of the Municipalities Act alleging that he had shown disgraceful conduct. The order was challenged by him before the learned Single Judge and the learned Single Judge allowed the Special Civil Application and held that merely because there happened to be registration of an offence against the 1st respondent and when that offence was not alleged to have been committed by him in discharge of his duties as Municipal Councillor, it was not open for the State Government to remove him under Sec.37 of the Gujarat Municipalities Act.

2. The judgment of the learned Single Judge is under challenge by way of this Letters Patent Appeal before us.

3. The learned Counsel for the appellant submitted that Sec.37(1)(b) of the Act could be invoked against the President of the Municipality even if the disgraceful conduct is unconnected with his duties as the President of the Municipality. Sec.37(1)(b) reads as under:

"Any President or Vice-President of a Municipality, if after giving the Councillor, President or as the case may be Vice-President, an opportunity of being heard and giving due notice in that behalf to the municipality and after making such an inquiry as deems necessary, the State Government is of the opinion that the councillor, President or as the case may be, Vice-President has been guilty of the misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under this Act."

4. The learned Counsel for the appellant placed reliance on a decision reported in AIR 1995 Gujarat 118 (Anishbhai Ishabhai Patel vs. State of Gujarat & Ots.). In that case a similar provision contained in Gujarat Panchayats Act was interpreted by the learned Single Judge and held that "disgraceful conduct" need not necessarily be connected with the official function of the Member of the Panchayat. It is held that the term "misconduct" mentioned in the Section must be misconduct in discharge of his duties, whereas "disgraceful conduct" is prefixed by the expression "any" and therefore, it need not necessarily be in the discharge of his duties.

It is also held by the learned Single Judge that "disgraceful conduct" shown in Sec.49(1) of the Gujarat Panchayat Act would mean any allegation which because it is done by an elected member of the office bearer is sufficiently reprehensible to be classified as "disgraceful".

5. In an earlier decision of a Division Bench of this Court reported in 1983(1) GLR 67 (Chimanbhai R.Patel vs. Anand Municipality & Ots.) a contrary view was taken. In that case, Section 37 of the Gujarat Municipalities Act was interpreted and it was held that the misconduct or the disgraceful conduct must have connection to the official duties as a President of the Municipality. It was stated in para 5 of the judgment that act of misconduct or disgraceful conduct or the incapacity must relate to the office of which he is sought to be stripped under the aforesaid provision.

6. In the present case, admittedly, the allegation regarding disgraceful conduct has no relation to the duties and functions of the President of the Municipality. On going through the Section, as stated above, it is clear that the President or the Vice-President as the case may be, must have shown disgraceful conduct in relation to any act in discharge of his official duties. It is important to note that the President is an elected member of the people and he is holding such an office by virtue of the mandate given by the electorates. The State Government is given power of removal only if he has been guilty of misconduct in the discharge of his duties or he has shown disgraceful conduct in respect of his official duties or if he is incapable of performing his duties. A plain reading of the relevant portion would only convey the meaning that disgraceful conduct also should have connection to his official duties. The learned Single Judge was perfectly justified in taking that view. No other point was urged by the appellant. The LPA is dismissed.
